IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10596 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TUKARAM AMRUTBHAI KARDILIE OF SAPUTARA, DIST. DANG

Versus

STATE OF GUJARAT

Appearance:

MR ARVIND C NAIK for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/04/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 09th May, 1997 (Annexure-C) passed by the Secretary, Information, Broadcasting & Tourism Department, cancelling the allotment of the plot of land

bearing City Survey No.31, admeasuring 10 x 10 mtrs. in Saputara. The land admeasuring 10 x 10 mtrs. bearing City Survey No.31 was made in favour of the present petitioner.

2. The allotment was cancelled by the impugned order dated 09/05/1997 on the ground that the allotment order dated 07-03-1995 (Annexure-A) was not in accordance with the Government resolutions dated 18-04-1990 and 12-12-1991 under which the land was required to be allotted by public auction but the Collector had allotted the land in favour of the present petitioner contrary to the aforesaid government policy.

3. In the present petition, it is contended as under:-

(i) the impugned order dated 09/05/1997 was passed by the Secretary, Information, Broadcasting & Tourism Department although he had no authority to pass such an order and that in similar other cases such orders passed by the Secretary, Information, Broadcasting & Tourism Department have been quashed by this Court on the ground that the said officer had no jurisdiction.

(ii) in similar case of Smt.Ramilaben Solanki the allotment made by the Collector in her favour was cancelled but subsequently, Collector vide order dated 03/11/1998 granted the said land admeasuring 150 sq.mtrs. to Smt.Ramilaben Solanki on payment of Rs.1,27,800/= which was the market price of the land in question.

4. In response to the notice of rule issued by this Court, affidavit-in-reply has been filed on 29/12/2001 by District Collector, Dang-Ahwa pointing out that in other cases, the allotment of land in Saputara otherwise than by public auction has subsequently been cancelled by the Jt. Secretary (Dispute). But it is not the case of the respondent in the reply affidavit that the respondents have allotted the land in question to any other party after taking back possession thereof from the petitioner.

5. At the hearing of this petition, Mr.Sen, learned A.G.P. opposes the petition on the ground of delay of four years in filing the petition and also on the ground that when the allotment was made contrary to the Government policy, there is no warrant for interference with the impugned order.

6. Mr.A.C.Naik, learned counsel for the petitioner submits that the petitioner is prepared to pay the market price for the land in question just as Smt.Ramilaben Solanki was re-granted the said land on payment of market price.

7. Having heard learned counsel for the parties, it appears to the Court that although there may be some substance in the argument about the jurisdiction of the officer to cancel the allotment order passed earlier, in view of delay of four years in filing the present petition and also considering the fact that in other cases also the allotment has been finally cancelled by the Jt. Secretary (Dispute), and that the allotment in favour of the petitioner was made contrary to the government policy and also considering the fact that the land was allotted to the petitioner for a meagre premium, the Court is not inclined to exercise its extraordinary prerogative jurisdiction under Article 226 of the Constitution for quashing and setting aside the order dated 09/05/1997 passed by the Secretary, Information, Broadcasting & Tourism Department on the ground that the order should have been passed by some other officer of the State Government.

8. Even so when the land admeasuring only 100 sq.mtrs. and was allotted to the petitioner for selling milk and milk products, and when the petitioner is ready to purchase the land in question at the market price as was permitted in case of Smt.Ramilaben Solanki, it would be just and proper to direct the petitioner to make a representation to respondent Nos.1 and 2 to allot the land in question to the petitioner on payment of market price and if such representation is made by 30th April, 2002, respondent Nos.1 and 2 shall consider the same as expeditiously as possible and in any case by 30th June, 2002. Till then the parties shall maintain status-quo regarding the land in question.

9. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is discharged with no order as to costs.

Sd/-

(M.S.Shah, J)

'Bhavesh'